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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

INDEMNITY INSURANCE CO. OF NORTH
AMERICA; SMITHKLINE BEECHAM CORP.
d/b/a GLAXOSMITHKLINE,

Plaintiffs,

- against -

FEDEX SUPPLY CHAIN SERVICES, INC.;
SWIFT TRANSPORTATION CO. INC.

Defendants.
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: ECF CASE

: 08 Civ. 5049 (LTS)

: **ANSWER TO CROSS**
: **CLAIM OF FEDEX SUPPLY**
: **CHAIN SERVICES, INC.**

FedEx Supply Chain Services, Inc. ("FXSCS"), for answer to the cross claim against it by codefendant Swift Transportation Co. Inc. ("Swift"), says as follows:

64. FXSCS denies the allegations contained in paragraph 64 of the cross claim.

65. FXSCS denies the allegations contained in paragraph 65 of the cross claim.

66. FXSCS denies the allegations contained in paragraph 66 of the cross claim.

67. FXSCS denies the allegations contained in paragraph 67 of the cross claim.

AFFIRMATIVE DEFENSES

Now, having responded to the enumerated allegations of the cross claim, FXSCS states by way of affirmative defenses, the following:

FIRST AFFIRMATIVE DEFENSE

The cross claim fails to state a claim or cause of action upon which any relief may be granted against FXSCS.

SECOND AFFIRMATIVE DEFENSE

FXSCS pleads affirmatively the protections of the provisions of F.R.C.P. 8(c), to the fullest extent permitted by law.

THIRD AFFIRMATIVE DEFENSE

Swift's cross claims as alleged and purported causes of action are barred and/or are limited by their own actions, negligence, and/or omissions, and/or the actions, negligence, and/or omissions by and of third-parties over whom FXSCS has and/or had no control.

FOURTH AFFIRMATIVE DEFENSE

The plaintiffs' damages, if any, were caused and/or were contributed to by the acts, negligence, or omissions by and of entities and persons other than FXSCS, for and over whom FXSCS has and/or had no control, and for and over whom FXSCS has and/or had no responsibility.

FIFTH AFFIRMATIVE DEFENSE

The plaintiffs' claims and Swift's cross claims against FXSCS as alleged and purported causes of action are preempted by federal law, including *inter alia*, the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 13506(a)(8)(B) and the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501 et. seq..

EIGHTH AFFIRMATIVE DEFENSE

FXSCS reserves herein unto itself, the right to assert, and option of asserting, additional Affirmative Defenses as necessitated by any additional facts and/or information adduced and/or provided hereafter in this action.

WHEREFORE, having fully answered the claims against it in this matter, FXSCS respectfully requests that it be dismissed from this matter with its reasonable costs.

DATED: New York, NY

July 22, 2008.

Respectfully submitted,

/S/

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FEDEX SUPPLY CHAIN
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document is being filed via ECF and will be automatically served electronically on the parties listed below:

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/S/

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